

GEORGE W. WAGNER  
HAZEL T. WAGNER

IBLA 83-879

Decided July 31, 1985

Appeal from a decision by the Montana State Office, Bureau of Land Management, declaring mining claim abandoned and void. M MC 44638.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2 in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally sufficient documents filed with them is rebuttable by probative evidence to the contrary. The presumption is not overcome by an uncorroborated statement that a document was mailed.

APPEARANCES: Robert R. Wagner for appellants. 1/

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1/ The decision was issued to George W. Wagner and Hazel T. Wagner, the record owners of the claim. A courtesy copy of the decision was issued to Robert R. Wagner, who performed assessment work on the claim in 1981. The notice of appeal, however, was submitted by Robert R. Wagner in his own name. The case file contains no information indicating that a transfer of any interest in the claim from George and Hazel Wagner to Robert has occurred. Under 43 CFR 3833.3, owners of mining claims are required to inform BLM of transfer and conveyance of interest in mining claims. While Robert Wagner's interest in the claim is not clear, we note that in addition to having the same surname, as George and Hazel Wagner, they share a common address. We conclude that Robert Wagner as a member of the family is, under 43 CFR 1.3(b)(3)(i), eligible to practice before the Department in connection with this matter.

## OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Appellants have appealed from a decision issued by the Montana State Office, Bureau of Land Management (BLM) dated July 21, 1983, declaring the Crazy Man Placer mining claim, M MC 44638, abandoned and void for failure to file either evidence of annual assessment work or a notice of intention to hold for the claim during calendar year 1982 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), and the implementing regulation 43 CFR 3833.2-1(b). The mining claim was located in 1926, and recorded with BLM on October 15, 1979. Evidence of assessment work performed on the claim was filed with BLM in 1979, 1980, and 1981. No evidence of assessment work was filed with BLM in 1982. Accordingly, BLM issued its decision declaring the claim abandoned and void.

On August 5, 1983, in response to the BLM decision, Robert Wagner wrote to BLM enclosing a copy of the 1982 evidence of assessment which had been recorded in the county recorder's office in November 1982. In response the land law examiner, BLM, by letter dated August 13, 1983, advised: "[W]e have searched our files and cannot find this assessment filed in 1982." The file also contains a note by a BLM employee which states that she looked in the files of other mining claims but could not find a copy of the 1982 evidence of assessment for the Crazy Man Placer mining claim. On appeal, appellants state that a copy of the 1982 evidence of assessment was mailed to BLM, and that the document was either misfiled when received or lost in the mail.

[1] Under section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982) and its implementing regulation, 43 CFR 3833.2-1, the owner of an unpatented mining claim is required to file evidence of assessment work with BLM within a specified time period. The 1982 affidavit of assessment work for the Crazy Man Placer mining claim was due to be filed with BLM on or before December 30, 1982. Pursuant to 43 CFR 3833.4(a) the failure to satisfy the filing requirements of 43 CFR 3833.2-1 results in a conclusive presumption of abandonment and the claim is void. See 43 U.S.C. § 1744(c) (1982). This provision of FLPMA was recently considered by the United States Supreme Court and upheld. See United States v. Locke, 105 S. Ct. 1785 (1985).

[2] Appellants assert that the 1982 evidence of assessment was either misfiled by BLM or lost in the mail. The regulations define "file" in this situation to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.0-5(m). Depositing a document in the mails does not constitute filing. Id. Moreover, a legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); John R. Wellborn, 87 IBLA 20, 21 (1985). In James Boatman, 87 IBLA 31, 33 (1985), we stated:

When an appellant maintains that a document was sent to BLM, but BLM has no record of it, the presumption of regularity works against a finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallager, 66 IBLA 49, 51 (1982). Although the Board has held that the presumption of regularity may be rebutted, e.g., Bruce L. Baker, 55 IBLA 55 (1981);

L. E. Garrison, 52 IBLA 131 (1981), the presumption is not overcome by a statement that a missing document was mailed to BLM.

BLM searched its files, and could not locate the document for 1982. Appellants have offered no evidence to establish that the 1982 affidavit of assessment was in fact received by BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

James L. Burski  
Administrative Judge

